

CIVIL REVISION APPLICATION No 532 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of JJJJ

[illegible]

RUKSHMANIBEN WD/O KANTIBHAI      JAGJIVANDAS

JAYABEN WD/O Z M TAILOR

MR PF ZAVERI for Respondent No. 1

Date of decision: 24/03/2000

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the landlords original

plaintiffs against the respondents - tenants for a decree of eviction under the provisions of the Bombay Rent Act. The grounds for seeking the decree of eviction as set out in the suit plaint were two fold. (1) That the tenant was in arrears of rent of more than six months, and (2) non-user of the lease premises by the tenant for more than six months prior to the suit.

1.1 The trial Court, after scrutiny of the evidence on record, rejected the claim of the landlord as regards non-user of the suit premises by the tenant for a period of more than six months prior to the suit. However, on the aspect of arrears of rent of more than six months, the trial Court found that it was a case covered u/s 12[3][a] of the Bombay Rent Act, and that since the rent is payable by month, since there is no dispute regarding the amount of standard rent, and since the rent is in arrears for a period of more than six months, and since the tenant has neglected to make payment thereof until the expiration of one month after service of the statutory notice, the landlord would be entitled to a decree for eviction. The trial Court therefore passed a decree for eviction in favour of the landlord on this ground.

2. The tenants being aggrieved by this decree preferred an appeal u/s 29(1) of the Bombay Rent Act. The lower appellate Court, after hearing the parties, reversed the judgement and decree of eviction passed by the trial Court. Hence, this Revision by the landlords.

3. The judgement of the lower appellate Court, in my opinion, is terse, laconic and without any logic or reasoning whatsoever.

3.1 It is also required to be noted that the lower appellate Court did not disturb the finding of the trial Court to the effect that there is no dispute regarding the amount of standard rent, or that such rent is in arrears for a period of more than six months, and that the same has not been paid until the expiration of one month from the date of service of the statutory notice. A very short and limited point on which the lower appellate Court interfered was by merely blandly accepting the oral submission of learned counsel for the tenants that since the landlord had claimed rent at the rate of Rs.15/- per month, and had further claimed 75 paise per month as water charges, it should be regarded as a tax, and if it is so regarded, the element of tax being an annual event, would not permit an assertion that the rent was payable by the month, and would therefore

take the case out of operation of section 12[3][a] of the Bombay Rent Act.

4. In my opinion, this is not only a gross and perverse misreading of the evidence on record, but it is also a gross misapplication of the law.

4.1 No doubt, the claim of the landlord is that the tenant is liable to pay Rs.15/- per month by way of rent, and is also liable to pay 75 paise per month as water charges. No doubt, this is the case asserted and made out by the landlord in both the statutory notice, as also in the suit plaint. However, what the lower appellate Court failed to appreciate is that the claim for water charges was not in fact treated as part of the rent, but was treated as one of incidental liability which attached to the tenancy. This is amply made clear, if any clarification is necessary, from the deposition of the landlord at exh.16. Thus, when the suit notice, the suit plaint and the deposition are read in conjunction with each other, it becomes clear that the landlord's claim so far as it pertains to the rent, is clear and unequivocal, that the rent was Rs.15/- per month. The fact that any additional amount has been claimed by way of a further obligation of the tenant, does not make it part of the rent. It would be therefore futile to suggest that merely because landlord has claimed 75 paise per month as water charges, that obligation of the tenant must be included in the rent.

5. Even otherwise, assuming for the sake of argument that it forms part of the rent, nevertheless it cannot be said by any stretch of imagination to be a part of municipal tax. The landlord has never asserted or claimed that this water charge is a proportionate contribution by the tenant towards any taxes paid by the landlord to the Municipal Corporation. There is no reference to any sort or type of tax in either the suit notice or the suit plaint. To read an element of tax into the landlord's claim of water charges, would be a travesty of justice and would also amount to a perverse misreading of the evidence.

6. Lastly, even assuming for the sake of argument that the landlord's claim for water charges could be interpreted to be an element of tax, and could be incorporated into the monthly rent, the same would nevertheless not take the case out of the purview of section 12[3][a] of the Bombay Rent Act. This position is amply made clear by the Supreme Court decision in the case of Raju Kakara Shetty v/s Ramesh Pratap Rao Shirole

reported in 1991[1] SCC 570. The Supreme Court has laid down in the said decision the clear principle that, merely because the rent includes an element of municipal tax, does not mean that rent is not payable by the month. If the rent is fixed rent per month, the element of tax within such fixed rent makes no difference, and such fixed rent remains "rent payable by the month".

6.1 On the facts of the case, there is no dispute and cannot be any dispute that the claim of the landlord both in respect of actual rent and in respect of water charges is a fixed claim on a monthly basis. The specific claim is that the rent is Rs.15/- per month and water charges are 75 paise per month. Thus, even if it be regarded that the consolidated obligation of the tenant on a monthly basis consisted of Rs.15 and 75 paise [by including the monthly water charges into the rent], it still remains a monthly obligation of the tenant, and by virtue of the principle laid down in the case of Raju Kakara Shetty [supra], would not take the case out of the operation of section 12[3][a] of the Bombay Rent Act.

7. In the premises aforesaid, once it is found that the case remains within the ambit of section 12[3][a] of the said Act, a decree for eviction must follow on the finding of fact recorded by the trial Court, to the extent they are not disturbed or reversed by the lower appellate Court. The fact that the tenant had paid up the arrears [as claimed in the suit notice] much after the filing of the suit and during the pendency of the suit, would not take the case out of the operation of section 12[3][a] of the Rent Act, and cannot possibly deprive the landlord of his right to a decree of eviction.

8. In the premises aforesaid, the impugned judgement and order of the lower appellate Court is quashed and set aside, and the judgement and decree passed by the trial Court is restored.

9. This revision is accordingly allowed. Rule is made absolute with costs.

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